

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8147 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHAGWANSINGH T RAJPUT

Versus

VADILAL ICE-CREAM PVT LTD

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Appearance:

MR MJ THAKORE for Petitioner  
MR SB VAKIL for Respondent No. 1  
MR JD AJMERA for Respondent No. 2  
SERVED for Respondent No. 3  
MR KH BAXI for Respondent No. 4  
MR BP TANNA for Respondent No. 5  
GOVERNMENT PLEADER for Respondent No. 7

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.M.SONI

Date of decision: 28/11/97

ORAL JUDGEMENT (Per Soni, J.)

1. Petitioner, by this petition, has prayed for issuance of a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction against the respondent No.1 restraining the respondent No.1 from running its factory at Tavdipura, Dudeshwar Road, Ahmedabad and directing it to shift the same to any other place. The petitioner has also prayed for issuance of a writ of mandamus directing the respondents No.2 to 4 to take necessary action including lodging criminal proceedings against the respondent No.1, its directors, manager and other responsible officers under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

2. On 8.12.1986, this Court issued notice in this matter. Respondents No. 1 and 4 have filed their affidavit in reply. Thereafter, on 9.10.1991, rule was issued and by a reasoned, speaking order, prayer for interim relief was refused.

3. Heard learned advocates. We propose to dispose of this petition on a question whether in the facts of the case should this petition be entertained? In view of this, we do not propose to enter into the various rival contentions raised by the petitioner in this petition for the reasons stated hereinbelow.

4. First version of the petitioner contained in the notice dated 14.11.1988 addressed to the respondent No.1, is that on 11.11.1988 at about 7.30 p.m. while he was sitting in his house with members of his family, there was a leakage of poisonous gas from the factory of the respondent No.1. One Manoduttsingh Acharya sitting with him in his house became unconscious. The petitioner and his family left the house. Thus, according to the first version of the petitioner, Manoduttsingh Acharya was sitting in his house and became unconscious because of the poisonous gas released from the factory of the respondent No.1. In his first version, the petitioner has nowhere stated that he had any breathing trouble or there was eye burning because of the leakage of the gas. These versions, for the first time, came in the petition, which is drafted by a Senior Advocate. At page No.15 of the petition, the said Manoduttsingh has filed an affidavit stating that on the said date, in the evening he went to purchase vegetables and when he was passing near the house of the petitioner, strong smell of leakage of gas came and he found it extremely difficult to breathe and lost consciousness and fell down, and people of that area including the petitioner, took him to his residence where

he regained consciousness. Neither the petitioner nor Manodutsing has taken any medical treatment, nor is there any evidence on record to show the effect of the gas leakage from the factory of the respondent No.1. Respondent No.1 has admitted in his affidavit in reply that there was a leakage of gas on 11.11.88 from the flange packing, which was controlled within ten to fifteen minutes, and there was no injury or damage and the said facts have been mentioned in the letter dated 31st March 1989 written to the Board. Though the case of the respondent No.1 is that no damage is caused, neither the petitioner nor Manodutsing has produced any medical evidence as to injury or damage caused to either of them, nor regarding treatment to the petitioner or members of his family or to Manodutsing. In the absence of any such evidence, it would be difficult to say that any damage is caused by the release of the gas. When respondent No.1 candidly admits that the leakage occurred but the same was controlled within 10 to 15 minutes, and when no damage is established, there is no reason to entertain the petition.

5. This petition is of the year 1988. Thereafter, despite opportunity given to the petitioner to file affidavit-in-rejoinder whereby he could have either controverted the say of the respondent No.1 or place on record necessary medical evidence regarding injury caused to him or members of his family or to Manodutsing or to show existence of any grave situation, till date no affidavit-in-rejoinder is filed. It is also to be born in mind that the averments and statements made in the affidavit in reply filed by the respondent are not controverted by the petitioner. It is stated in the affidavit-in-reply that there are number of other factories in the locality which are dealing with such type of gas viz: Ammonia. It is a known fact that ammonia is not such a highly poisonous gas. It is soluble in water and it can be very easily treated in case of leakage. Respondent No.1 has in its affidavit-in-reply specifically and categorically stated that the leakage which was at the relevant time was controlled immediately and necessary equipment has been repaired. The incident in question has occurred about ten years ago. Since last ten years, no incident is reported or complained. It is very clear from the affidavit in reply filed on behalf of Board and Factory Inspector that the incident of leakage was inquired into by the Chief Inspector of Factories and it was found that leakage was controlled within 10 to 15 minutes and no injuries or damage was reported. It is further stated that this was a solitary incident callinx

g for no action under the provisions of the relevant Statute.

6. In view of the above state of affairs, we do not find any reasons to entertain this petition. Hence this petition stands dismissed. Rule is discharged. No order as to costs.

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